

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 509 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DINESHKUMAR UMEDRAM SONI AND OTHERS.

Appearance:

MR DP JOSHI, APP for Appellant.

MR KS JHAVERI for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 29/04/99

ORAL JUDGEMENT [Per : J.M.Panchal,J]

The acquittal of the respondents of the offences punishable under secs.302, 304(B), 498(A), 201 and 114 of the Indian Penal Code, recorded by the learned Additional Sessions Judge, Palanpur (B.K.), vide judgment and order dated August 31, 1991, rendered in Sessions Case No.100

of 1987, is subject matter of challenge in the present appeal which is filed by the State of Gujarat under sec.378 of the Code of Criminal Procedure, 1973.

2. The prosecution case in short is as under:

Prabhulal Ramchandbhai Soni is resident of village Santalpur, District Banaskantha. Marriage of his daughter Vanita was solemnised with respondent no.1 on December 6, 1985. The respondents Nos.2 and 3 are the parents of respondent No.1, whereas, respondent No.4 is sister of respondent No.1. It is the case of the prosecution that deceased Varsha alias Vanita was subjected to cruelty by the respondents as she had not brought sufficient dowry. The incident in question took place on May 23, 1987, at about 10.00 o'clock. The prosecution case is that the respondents Nos.3 and 4 had caught hold of the hands and legs of the deceased Vanita whereas the respondents Nos.1 and 2 had gagged her mouth and nose and killed her. The case against the respondents was that after the death of Vanita, she was brought by respondents to Santalpur before Dr. Bachubhai Vadilal Shah, who on examination declared the deceased to be dead and also informed relatives of the deceased through his peon. On being informed, Kirtibhai Ramjibhai Soni, who is uncle of the deceased and his aunt Kashiben and Hasmukhlal made inquiries with the Doctor and learnt that the deceased was removed to Government Dispensary. As a result all the three proceeded towards bus stand but a truck driver informed them that dead body of Vanita was not taken to Government dispensary but was taken to village Madhutra and, therefore, all of them started for going to village Madhutra and when they reached bus stand they met Prabhulal, who is father of the victim with whom all of them went to village Madhutra in a truck. They reached village Madhutra at about 11.00 a.m. They found that dead body of deceased was kept on ground and on inquiry the respondent No.2, who is father-in-law of the deceased, informed that the deceased had committed suicide by hanging. It is case of Kirtibhai and other relatives of the deceased that when they removed the cloth from the dead body they did not find any ligature marks. Kirtibhai Soni made arrangement for bringing his two other brothers namely Kantilal Ramchand and Ratilal Ramchand, who arrived at village Madhutra within 20 minutes. According to relatives of the deceased, respondents requested them not to inform the police but Kirtibhai Soni was of the opinion that deceased was done to death by the respondents and, therefore, the matter must be reported to the police. Accordingly, Ratilal who is elder brother of Kirtibhai went to village Santalpur and came back with police constable Vasrambhai. The

relatives of the deceased informed the police constable Vasrambhai that they were going to Varahi Police Station for the purpose of lodging complaint and therefore he should not permit cremation of dead body of Vanita to be performed. Thereafter, Kirtibhai in company of Ratilal, Prabhulal, Kashiben, Hasmukhlal and Tarachand proceeded to go to Santalpur but they did not get vehicle and they reached Santalpur at about 4.00 or 4.15 p.m. Kirtibhai thereafter took bath and went out for conveying necessary information to Varahi Police Station on telephone. He could not contact police officer in charge of Varahi Police Station, and therefore, after half-an-hour he contacted police officer in charge of Radhanpur Police Station and informed him that deceased Vanita was killed by the respondents and message was being conveyed to Radhanpur Police Station as contact P.S.O. of Varahi Police Station was not established. After conveying the information to Radhanpur Police Station, Kirtibhai again tried to contact Varahi Police Station and he informed the police officer in charge of Varahi Police Station that his niece Vanita was killed by the respondents, and appropriate steps should be taken so that the dead body was not cremated before autopsy was performed. According to Kirtibhai, he was told by the officer in charge of Varahi Police Station that a constable was being deputed and that his complaint was noted down. Kirtibhai went to Varahi Police Station personally at about 8.00 p.m., but, Police Inspector was not present and, therefore, he had returned to his residence at about 12.30 a.m. He was informed by Jamadar of Varahi Police Station that the dead body was already cremated. According to Kirtibhai, he had gone to Varahi Police Station on May 24, 1987, at about 12.00 noon, but, his complaint was not recorded and he learnt that instead of registering a case of murder a case of suicide was registered by the police itself on May 25, 1987. According to him, he again went to Varahi Police Station on May 26, 1987, but his complaint was not registered, and therefore, on May 27, 1987, he made registered applications to DSP Palanpur, DIG Ahmedabad etc. as a result of which, investigation was transferred to Police Sub-Inspector Mr.Trivedi of LCB, who conducted investigation into the case. The Investigating Officer recorded statements of witnesses who were found to be conversant with the facts of the case and attached incriminating articles. He also prepared panchnama, place of occurrence, crematorium ground etc. and sent the incriminating articles to Forensic Science Laboratory for analysis. On receipt of reports and at the conclusion of investigation, the respondents were chargesheeted in the court of learned J.M.F.C. Radhanpur for the offences punishable under secs.302, 304(B),

498(A), 201 and 114 of the Indian Penal Code. The offences punishable under secs. 302 and 304(B) are exclusively triable by the Court of Sessions and, therefore, the case was committed to the court of Sessions, Banaskantha at Palanpur for trial. The learned Additional Sessions Judge to whom the case was made over for trial, framed charge against the respondents at Exh.3 for the offences punishable under secs. 302, 304(B), 498(A), 201 read with sec.34 of the Indian Penal Code. The charge was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined; (1) Kirtibhai Ramjibhai Soni, PW 1, at Exh.12, (2) Kasiben Bhaichand, PW 2, at Exh.18, (3) Manabhai Khodabhai Prajapati, PW 3, at Exh.19, (4) Kantilal Ramchand, PW 4, at Exh.20, (5) Taraben Parsottambhai, PW 5, at Exh.21, (6) Ratilal Ramchand, PW 6, at Exh.22, (7) Bachubhai Vadilal, PW 7, at Exh.24, (8) Prabhulal Ramchand, PW 8, at Exh.25, (9) Dipubhai Dolji, PW 9, at Exh.26, (10) Rambhai Virabhai, PW 10, at Exh.34, (11) Kanji Samla, PW 11, at Exh.35, (12) Nasubha Ravaji, PW 12, at Exh.36, (13) Pratapji Hajurji, PW 13, at Exh.37, (14) Rasulkhan Alikhan, PW 14, at Exh.38, (15) Ravaji Talaji, PW 15, at Exh.39, (16) Mavaladan Naranji, PW 16, at Exh.43, (17) Ravidutt Ratensvar, PW 17, at Exh.44, (18) Chunilal Chelaram, PW 18, at Exh.47, (19) R.M. Nayak, PW 19, at Exh.51, (20) Mana Khoda, PW 20, at Exh.60, (21) G.L.Trivedi, PW 21, at Exh.61, and (22) H.V.Saiyed, PW 22, at Exh.66, to prove the case against the respondents. The prosecution also produced documentary evidence, such as, complaint dated May 27, 1987, given by Kirtikumar Soni to P.S.I. of Varahi Police Station at Exh.13, complaint dated June 4, 1987, given by Kirtikumar Soni to Senior PSI Varahi Police Station at Exh.14, Panchnama of place of offence prepared by Sr.PSI Varahi Police Station in presence of panchas at Exh.29, Copy of entry made in Telephone Inward Register at Exh.45, Copy of entry No.18 of Station Diary Register at Exh.46, Report of the Police Station Officer dated May 23, 1987 at Exh.52, Complaint dated May 24, 1987 given by Head Constable Rameshchandra Mohanlal of Varahi Police Station at Exh.53, Panchnama of place of offence prepared by Head Constable Rameshchandra Mohanlal at Exh.54, Abstracts of Telephone Registers at Exh.55 and 56, Complaint by Kirtikumar to Director General of Police, Ahmedabad, District Superintendent of Police, Palanpur etc., at Exh.62, FSL report at Exh.68 etc., to bring home guilt to the respondents. After recording of evidence of prosecution witnesses was over, the learned Judge questioned the respondents generally on the case and recorded their further statements under sec.313 of the

Cr.P.C. 1973. In their further statements, the respondents denied the case of prosecution. However, the respondents did not lead any evidence in their defence, but written statement was filed on behalf of respondents No.1 and 2 at Exh.70.

3. On appreciation of evidence led by the prosecution, the learned Judge held that the prosecution failed to prove that on May 23, 1987, at about 10.00 a.m., the respondents Nos.3 and 4 had caught hold of the hands and legs of the deceased whereas respondent No.1 and 2 had gagged her mouth and nose and caused her death. The learned Judge deduced that it was not established that death of deceased Vanita was caused by bodily injury within 7 years of her marriage and that soon before her death she was subjected to cruelty by the respondents in connection with any demand of dowry and therefore offence under sec.304(B) was not made out. The learned Judge concluded that no satisfactory evidence was led by the prosecution to prove the charge that the respondents had subjected deceased Vanita to cruelty as contemplated by sec.498(A) of the Indian Penal Code. The learned Judge further held that the respondents had not caused any evidence of the commission of offence to disappear with the intention of screening the offenders from punishment and, therefore offence under Section 201 I.P.C. was not made out. In ultimate decision, learned Judge acquitted the respondents by the impugned judgment dated August 31, 1991, giving rise to present appeal.

4. Mr. D.P.Joshi, learned Counsel for the appellant submitted that the learned Judge has given much more importance to the minor omission and contradictions appearing in the evidence of prosecution witnesses who are rustic villagers and, therefore, on reappraisal of their evidence in correct perspective, the respondents should be convicted of the offences with which they were charged. The learned Counsel emphasised that serious allegations were levelled by the complainant against Head Constable Mr. R.M.Nayak, as well as PSI Mr.Trivedi, and therefore, their evidence could not have been taken into consideration while considering the prosecution case. The learned counsel pleaded that the evidence on record clearly establishes that the respondents had subjected the deceased to cruelty because she had not brought sufficient dowry and had killed her by gagging her mouth and nose, and therefore, all the respondents should be convicted under sec.302 of the Indian Penal Code as well as sec.304(B) of the IPC. What was stressed was that the respondents had caused disappearance of the evidence by cremating the dead body, and as prosecution case against

the respondents is established beyond reasonable doubt and, therefore, appeal should be accepted.

5. Mr. K.S.Jhaveri, learned Counsel for the respondents contended that the evidence of Dr.Bachubhai Vadilal Shah before whom deceased was taken by the respondents clearly establishes that she had died of ailment, and as prosecution failed to prove either homicidal or suicidal death, the appeal should be dismissed. It was urged on behalf of the respondents that the evidence of Head Constable Mr. Nayak establishes that the complainant and other relatives of the deceased wanted to extort money from the respondents and as they could not succeed in getting the money, a false case was cooked up against the respondents. The learned counsel pointed out major contradictions as well as omissions appearing in the evidence of prosecution witnesses and claimed that as prosecution case is unreliable, the well founded acquittal recorded by the learned Judge should be upheld by this court. The learned counsel emphasised that two views of the matter are possible, and therefore, the appeal filed by the State Government should be dismissed.

6. The learned Counsel for the parties have taken us through the entire evidence on record. It is not in dispute that marriage of daughter of Prabhulal Ramchand Soni was solemnised with respondent no.1 on December 6, 1985, and that she was legally wedded wife of the respondent No.1. It is also not in dispute that after the marriage deceased Vanita was residing with the respondents at village Madhuttra. According to prosecution, she was subjected to cruelty as she had not brought sufficient dowry, but she was tolerating the cruelty in the hope that with the passage of time everything would be alright. The incident in question took place on May 23, 1987, about 10.00 a.m., and Kirtibhai and other relatives of the deceased, learnt from Dr. Bachubhai who is having dispensary at village Santalpur that deceased had died when deceased was brought by the respondents before him and when on examination he declared her to be dead. The conduct of the respondents in taking the deceased to Santalpur where the relatives of the deceased are staying is totally inconsistent with their guilt. If they had committed murder as alleged by the prosecution they would not have taken the body of the deceased to Dr. Bachubhai who is stationed at village Santalpur and who is known to all of the relatives of the deceased Vanita and would have taken her body to another place. All the prosecution witnesses have stated that when they went to village Madhuttra the

body of the deceased was kept on the floor and on removal of cloth placed on her dead body no ligature mark was found. It is claimed by them that the cloth placed on the dead body was removed because respondent no.2 had informed that deceased had committed suicide. However all the relatives of the deceased are contradicted with their earlier police statements and record of case shows that material improvements were made by all relatives of the deceased in their evidence before the Court. We further notice that the prosecution has totally failed to prove that the death of deceased Vanita was either homicidal or suicidal because post mortem on her dead body was never performed. Dr. Bachubhai before whom the deceased was taken has clearly stated in his evidence that he had not found any injury on the body of the deceased. The cross-examination of this witness indicates that even grandmother-in-law of deceased Vanita had also accompanied others when deceased Vanita was brought before him and on a question being put by Dr. Bachubhai, the old lady had informed the doctor that deceased was suffering from fever since 3 to 4 days prior to the date of the incident. It is an admitted position that Ratilal who is brother of Kirtibhai had gone to Santalpur and come back with Police Constable Vasrambhai and before going to Varahi Police Station for lodging complaint, all had instructed Police Constable Vasrambhai to see that dead body was not cremated before performance of autopsy. In normal circumstances, a police officer would not allow the dead body to be cremated before performance of autopsy if he has reason to believe that the death of woman has occurred within seven years of her marriage. Under the circumstances, the defence of the respondents that dead body of the deceased was cremated with consent of relatives of the deceased becomes more probable. Moreover, the evidence of Head Constable Rameshchand Mohanlal Nayak of Varahi Police Station recorded at Exh.51, makes it clear that neither Kirtibhai nor other relatives of the deceased were ready to lodge complaint and, therefore, he himself had lodged complaint against the respondents for the offences punishable under secs.498(A), 201, 176 read with sec.114 of the Indian Penal Code. His evidence also establishes that Kantilal, who is one of the uncles of the deceased had made him to wait for unreasonable time for lodging complaint on the ground that the complaint was to be filed after receipt of Rs.51,000/- from respondent no.2. The entries produced by the said witness show that Prabhulal Ramchand Soni, who is father of the deceased had never mentioned that her daughter was done to death by the respondents for not bringing sufficient dowry. On the contrary, those entries suggest that a suspicion was expressed by

the father of the deceased that the deceased had died in suspicious circumstances. We notice that nothing is alleged by prosecution against this witness. The relatives of the deceased i.e. (1) Kirtibhai Ramjibhai, (2) Kashiben Bhaichand, (3) Kantilal Ramchand, (4) Taraben Parsottambhai, (5) Ratilal Ramchand, and (6) Prabhulal Ramchand claimed before the court that on inquiry being made respondent No.2 had informed them that deceased had committed suicide. The parents of the deceased i.e. Prabhulal Ramchand Soni and Taraben claimed before the court that 3 to 4 months prior to the date of the incident the deceased had come to their house and stated about the cruelty to which she was subjected to by the respondents for not bringing sufficient dowry. However, all the witnesses have admitted that the fact that respondent no.2 had informed them that deceased had committed suicide or that deceased had informed her parents about the cruelty meted out to her for not bringing sufficient dowry was never mentioned by them in their previous statements recorded by the investigating officer under sec.162 of the Code. Thus, there is no manner of doubt that all the witnesses have made material improvements in their testimony before the court making their testimony highly doubtful. As noted earlier, the prosecution has not led any evidence either in the form of injury certificate issued by any medical practitioner or in the form of post-mortem notes to indicate that the death of the deceased was either homicidal or suicidal. On the contrary, the evidence of Dr. Bachubhai shows that the deceased died a natural death. The evidence of complainant shows that complaint was filed after getting legal advice. Under the circumstances, the findings recorded by the learned Judge to the effect that prosecution has failed to prove that respondents Nos.3 and 4 had caught hold of the hands and legs of the deceased whereas respondents Nos.1 and 2 had gagged the mouth and nose and caused her death is not proved, is eminently just and deserves to be upheld. The evidence led by the prosecution regarding the demand of dowry and the deceased having been subjected to cruelty does not inspire any confidence and, therefore, the same is rightly disbelieved by the learned Judge. Dr. Bachubhai who had the earliest opportunity of examining the deceased has not stated in his testimony before the court that death of the deceased was suspicious in any manner and it is relevant to note that nothing is alleged by the prosecution against the said witness. Though a rope was found from the place of occurrence at the time of preparation of panchnama of place of offence, the said circumstance is of no assistance to the prosecution case because prosecution has not proved the fact that death of

the deceased was either homicidal or suicidal. Again no reliable evidence is adduced by the prosecution to prove its case that the respondents had caused disappearance of any evidence of the commission of any offence and that too with the intention of screening the offenders from legal punishment. In our view, the view taken by the learned Judge is reasonable and no ground is made out by the learned Counsel for the appellant to interfere with the same in the present appeal.

7. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent. The learned Additional Public Prosecutor has failed to convince us to take the view contrary to the one already taken by the learned Judge and therefore, the appeal is liable to be rejected.

8. For the foregoing reasons, we do not see any merits in the appeal. The appeal, therefore, fails and dismissed. Muddamal articles to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

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